AUSTRALIAN PROPERTY LAW (LAW1024) EXAM NOTES
Semester 1, 2026

Contents

WEEK 1 – DEFINING PROPERTY

Classification

- **Property Interest:** Property is not a physical 'thing', but a legally recognised, dynamic relationship between individuals (subjects) and assets (objects) that defines the extent of enforceable rights or obligations (*Yanner v Eaton*).
- Property is often defined as a '**bundle of rights**' (*Yanner v Eaton*):
  - Subject of property: The legal entity (individual, corporation, or First Nations group) exercising rights.
  - Object of property: The tangible or intangible asset over which rights are exercised. Both Subject and Object are determined by changing social values, state recognition, and technology.
  - Rights include: At common law, property represents a bundle of distinct rights:
    - **Right to Possess:** Physical control or exclusive possession.
    - **Right to Use or Enjoy:** Deriving utility from the asset.
    - **Right to Exclude:** The core ability to prevent the world from accessing the resource.
    - **Right to Alienate:** To sell, transfer, gift, or bequeath the asset.
    - **Right to Destroy:** The theoretical capability to end the existence of the object
- It describes the relationship a person has with something they own (e.g. land), but can also describe the right to enforce a contract (e.g. a bank account).
- Counter traditions suggest property is not just 'rights' but 'obligations'. *Milirrpum v Mabalco; Mabo (No 2)* consider spiritual connection of Indigenous people with the land

Real Property (Realty)

Interests in land where the *res* (the thing itself) is recoverable in kind via a freehold action.

- **Corporeal Hereditaments:** Tangible, physical land interests capable of inheritance (e.g., land, fixtures, minerals, and crops).
- **Incorporeal Hereditaments:** Intangible, non-possessory rights over land capable of inheritance (e.g., easements, profits à prendre, and restrictive covenants).

Personal Property (Personalty)

All property interests that do not constitute a freehold estate.

- **Chattels Real:** Leasehold estates. Historically classified as personalty because they have a definite duration ('less than freehold') and were not originally recoverable in kind.
- **Chattels Personal:** All other forms of personal property:
  - *Choses in Possession:* Tangible, movable physical items that can be physically held (e.g., cars, phones, TVs).
  - *Choses in Action:* Intangible rights with no physical form that can only be enforced via legal action (e.g., shares, debts, bank accounts, bitcoin).

Linguistic Distinctions in Succession Law

- **Devise:** Leaving real property (realty) via a will.
- **Bequeath:** Leaving personal property (personalty) via a will.

Proprietary vs personal rights (Property vs contract)

Core Test Matrix

Feature	Contractual / Personal Rights (*In Personam*)	Proprietary Rights (*In Rem*)
Enforceability	Enforceable **only** against the specific contracting parties (*in personam*). Subject to the doctrine of privity of contract.	Enforceable against the **whole world** (third-party assignees, occupiers, and generic interlopers) (*in rem*).
Survival in Insolvency	Extinguished or reduced to pennies on the dollar; claimant ranks as an unsecured creditor.	Survives insolvency; the claimant can 'trace' and pull the physical asset out of the bankruptcy pool.
Remedies	The default remedy is **monetary damages** (compensation for expectation or financial loss).	**Injunctions, specific performance, restitution**, actions in trespass, detinue, or conversion.

Precedents

King v David Allen & Sons Billposting Ltd [1916] (House of Lords)

- **Rule:** A contract granting permission to display advertisements on a structure's wall creates a mere **contractual license**, not a proprietary interest (estate or easement) in the land.
- **Application:** King granted David Allen a 4-year advertising license. King subsequently leased the premises to a third-party company for 40 years without reserving the advertising rights. The company's staff forcibly blocked David Allen from posting bills.
- **Conclusion:** Because the right was a personal license, it did not bind the third-party company. However, King was held fully liable in damages to David Allen because he executed a lease that stripped away his right to possession, disabling himself from performing his contractual obligations.

Cowell v Rosehill Racecourse Co Ltd [1936] (High Court of Australia)

- **Rule:** The purchase of an entertainment ticket creates a **personal contractual license**, not a proprietary interest in land (rejecting the English *Hurst* doctrine). There is no proprietary 'right to a spectacle' recognized by law.
- **Application:** Cowell paid 4 shillings to enter Rosehill Racecourse. He was asked to leave, refused, and was physically ejected using reasonable force. Cowell sued for assault, arguing the paid ticket made his license irrevocable.
- **Conclusion:** A property owner can revoke a contractual license at will. Even if the revocation breaches a contract, the license is effectively terminated, and the licensee becomes a trespasser if they do not depart within a reasonable time. Equity will not issue an injunction to restrain a breach of a mere license because common law damages (a refund of the ticket price) are adequate. Ejection was lawful; the assault claim failed.

Doctrine of fixtures

Common law doctrine of fixtures provides rules to determine whether an item of personal property (a chattel) has become part of land, so that they can change their classification to real property under operation of law. This is critical for determining what is included in a sale of land, a mortgage, or what remains with a landlord at the end of a lease.

- *Property Law Act 1958* (Vic) **('PLA')** s 18 defines 'land' as 'any tenure, and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) **and other corporeal hereditaments**…'

- A corporeal hereditament (a tangible item capable of being inherited) that is fixed to the land is known as a **'fixture'**. **Fixture:** A chattel that has become so attached to the land as to become part of the land (*quicquid plantatur solo, solo cedit* – whatever is affixed to the soil belongs to the soil).The owner of land is also the owner of fixtures attached to land.

- Chattel: Moveable personal property that retains its independent character.

Doctrine of fixtures: Steps

In a dispute about whether an item is part of land, or personal goods, and there is <u>**no**</u> relevant contract or agreement between the disputing parties, a Court will use the Doctrine of Fixtures to determine the matter. This requires examining the circumstances that existed at the time the item was annexed (or not) objectively as a question of fact.

Step 1: Contract
Examine the governing instrument (contract of sale, mortgage deed, or lease agreement).

- **Rule:** Property law allows parties to contract out of common law fixture rules. An explicit contractual clause overrides the common law doctrine.
- **Test:** What contract exists between the parties? (Building contract). Is there an express, unambiguous clause categorising the specific item as an included fixture/improvement or an excluded good/chattel?
  - *If YES:* Common law doctrine will be overridden by contractual provision.
  - *If NO / Ambiguous:* Apply doctrine of fixtures (Contract didn't address issue of aircon specifically in contract, found ambiguous. This gives rise to the need to consider the doctrine of fixtures)

Step 2: Establish the legal presumption (mode of annexation)
- The Doctrine has two limbs: degree of annexation and object of annexation (*Holland v Hodgson; Australian Provincial Assurance Co Ltd v Coroneo*).
- Degree of annexation is the consideration of the 'mode of fixing' that establishes the rebuttable presumption of fixture or chattel (how is the item attached to the land?) (Apply *Belgrave Nominees v BSA; NAB v Blacker*)

➢ Presumption 1 (Attached by means more than own weight): If an item is attached by screws, bolts, etc., it is *prima facie* a <u>fixture</u>, even if the attachment is slight.
  - The stronger the attachment, the stronger the presumption.
  - Burden of proof: The party claiming it is a chattel bears the burden of proving otherwise.
  - (*Buckland v Butterfield* - verandah attached to a house held to be a fixture)

➢ Presumption 2 (Attached only by no more than its own weight): If an item rests entirely on its own weight, it is *prima facie* a <u>chattel</u>, even if it has become embedded in the soil
  - Burden of proof: The party claiming it is a fixture bears the burden of proving otherwise.
  - *Elwes v Maw*: wooden Dutch barn on upright posts in the ground held not to be a fixture
  - *Hulme v Brigham:* unattached printing press.

Step 3: Holistic evaluation (object of annexation)
- To confirm or successfully rebut the presumption established in Step 2, apply the modern, multi-factor **Object of Annexation Test** (*Belgrave Nominees; NAB v Blacker*). Intention must be evaluated **objectively** based on patent, observable facts at the time of attachment; subjective claims carry minimal weight.
- Object of annexation (*Belgrave Nominees v BSA*): what is the item attached to the land and why was it attached?

1. Nature of the chattel: what is it? Is the item an essential component of the building or land's primary function? Is it unique or custom-made for this specific property (can it be easily replaced with another)? Objectively do you expect it to be a chattel or does it form part of a building/land?
   - *Indicators for Fixture:* Structural integrations like air-conditioning systems in commercial towers or built-in infrastructure.
   - *Indicators for Chattel:* General standalone appliances or agricultural tools that are highly interchangeable.
2. The relation and situation of the party making the annexation vis-à-vis the freehold owner/person in possession: What is the legal status and commercial business of the individual who installed the item?
   - *Indicators for Fixture:* An owner-occupier or a specialist commercial subcontractor installing long-term functionality.
   - *Indicators for Chattel:* A temporary tenant or a licensee with short notice periods; courts infer they do not intend to gift permanent wealth to the landlord.
3. ***The mode of annexation: (degree of annexation considerations) What is the mode of fixing/How is the item affixed? Would removal cause damage to the land or buildings to which the item is attached (more likely fixture) or the item itself (more likely chattel)? Does it cost more to remove the item than the item is worth? Is expertise/specialist required to remove the item? Look at the engineering reality of removal

- **Damage Test:** Would removing the item cause substantial structural damage to the land/building, or destroy the item itself? (Damage points strongly toward a fixture) .
- **Cost Test:** Does the financial cost of extraction or renewal exceed the actual market value of the item?
- **Machinery/Expertise:** Is specialised engineering equipment or labour required to decouple the item?

4. ***Objective purpose of fixing: Why was the item secured? Whether the article was attached for the better enjoyment of the article, or for the better enjoyment of the land or buildings to which it was attached, including: the nature of the property the subject of affixation, whether the item was to be in position either permanently or temporarily, the purpose of annexing it. Does fixing allow item to be enjoyed? Or does fixing improve the building/land? Is fixing temporary or permanent (mode of fixing might impact this)

- **Better Enjoyment of the Land:** Was it attached to permanently improve the utility, safety, market value, or structural comfort of the realty? → **Fixture**
- **Better Enjoyment of the Item:** Was it attached merely to stabilise the object itself during operation, or for temporary display as a chattel? → **Chattel**.

Step 4: formulate the legal outcome
- Conclude whether the starting presumption was successfully displaced by the burden-bearing party.
- State the transaction outcome: Does the asset pass with the land to the homebuyer/bank, or does it remain the personal property of the seller/tenant/farmer?

Belgrave vs Blacker

Feature	*Belgrave Nominees v BSA* [1984] VR 947	*NAB v Blacker* [2000] FCA 1458
Disputed assets	Large commercial air-conditioning plant and chillers installed on building roofs.	Irrigation plant: 2 electric pumps on skids, 200 sprinkler heads, and L-valves on a dairy farm.
Physical connection	Chillers stood free by their own weight on 'Vibersorb' shock-absorbing pads. **However**, they were coupled to the building's water pipes by flanges and bolts, and water pumps were bolted to the platform. Electrical cables connected to a junction box.	Pumps were mounted on steel skids resting directly on the ground by their own weight. Connected to pipework by bolts that could be unfastened by hand in **25 minutes**. Sprinklers were attached to soft piping via detachable valves.
Starting presumption	**Fixture**. The physical connection to water pipes, flanges, and electrical junction boxes constituted a 'slight' fixing, shifting the BOP to the installer.	**Chattel**. The pumps and sprinklers rested entirely on their own weight on skids. The BOP sat squarely on the bank.
Object analysis	**Air conditioning is essential** to the comfort and permanent utility of a modern office tower. The plant formed an integral part of the building's infrastructure. High replacement cost ($90,000) vs. removal cost ($61,000) pointed to permanence.	**Equipment was highly mobile**. The skids featured towing hooks and points for tractor transport across various paddocks. Removal caused **zero damage** to either the land or the machinery.
Discharge of BOP?	**No**. The sub-contractor failed to displace the presumption that the interconnected chillers were fixtures.	**No**. The bank failed to prove that the mobile, easily detached agricultural system was intended to be permanent.
Final legal holding	**Fixtures**. The property owner was granted a mandatory injunction compelling the return of the plants.	**Chattels**. The equipment remained personal property; the vacating farmer was legally entitled to remove them.

New forms of property

The *numerus clausus* (closed list) principle
- **Rule:** Common law and equity restrict proprietary interests to a strictly limited, predictable set of traditional categories (e.g., fee simple, leasehold, easement, mortgage).

- **Rationale:** To prevent land titles from becoming over-complex, unmanageable, or unpredictable for third parties. Courts are highly reluctant to invent novel property rights at common law; hence, modern expansion is driven by statutory intervention.

Carbon credit unit test matrix

The legislature uses the ‘property bucket’ to deploy financial incentives for environmental mitigation, explicitly converting abstract ecological values into statutory personal property.

Statutory Statutory Instruments & Rules

1. Australian Carbon Credit Units (ACCUs)

- **Governing Act:** *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth).
- **Statutory Value: ~$34 per unit** at historical baseline auctions.
- **Core Statutory Test:**
    - **s 150:** Explicitly defines an ACCU as **personal property**. It is fully transmissible by assignment, testamentary disposition (will), or operation of law.
    - **s 151:** Establishes a rigorous system of State Registration. The registered owner possesses clear legal title, enabling them to trade, transfer, or voluntarily destroy the unit.

2. Forest Carbon Rights

- **Governing Act:** *Climate Action Act 2017* (Vic).
- **Core Statutory Test:**
    - **s 4:** Deems a forest carbon right to be a recognized **interest in land (real property)**.
    - **s 57:** Grants landowners the power to legally carve out, register, and transfer ‘forest carbon rights’ (the proprietary right to commercial benefits from carbon sequestration in trees/soil) as a permanent encumbrance that runs with the land.